IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5860 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GORDHANBHAI MOTIJI VIRVAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5860 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MS NANDINI JOSHI AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/08/2002

ORAL JUDGEMENT

By way of this petition, the petitioner detenu has challenged the detention order dated 10/6/2002 passed by the respondent No.2 under Sec.3(2) of the Prevention of Black Marketing and Maintenance of Supplies of

Essential Commodities Act, 1980 (hereinafter referred to as "the Act" for short) on various grounds.

2. The learned counsel for the petitioner has mainly argued that against the detention order dated 10/6/2002, the petitioner made a detailed representation to the concerned authority on 17/6/2002 through jail which has been received by the concerned authority on 24/6/2002 and the same has been rejected by the concerned authority on on 1/7/2002 and the petitioner was informed accordingly vide letter dt.1/7/2002 and said communication received by the petitioner afterwards. According to the learned counsel for the petitioner, there is a delay in deciding the representation of the petitioner and communicating the decision on the representation to the petitioner, which has not been explained by the concerned authority satisfactorily, which is unconstitutional. Reply of the respondent Nos.1, 2 and 4 are ordered to be taken on record. In support of his say, the learned counsel for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court reported in AIR 1981 SC 1126, in which the Honourable Supreme Court has held as under;-

> "We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

3. Since the concerned authority has not decided the representation of the petitioner and not communicated the decision of the representation of the petitioner promptly, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

4. In view of the above, the petition is allowed. The order of detention dated 10/6/2002 passed against the detenu is hereby quashed and set aside. The detenu namely Gordhanbhai Motiji Virval is ordered to be set at

liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik